SENATE BILL NO. 161

INTRODUCED BY MAZUREK, B. BROWN, BLAYLOCK, GOULD, CRIPPEN, SPAETH, MERCER, BRADLEY, VAN VALKENBURG, LORY, QUILICI

IN THE SENATE

JANUARY 20, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 5, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 6, 1987	PRINTING REPORT.
FEBRUARY 9, 1987	SECOND READING, DO PASS.
FEBRUARY 10, 1987	ENGROSSING REPORT.
FEBRUARY 11, 1987	THIRD READING, PASSED. AYES, 33; NOES, 15.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 18, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
MARCH 5, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 7, 1987	ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO COMMITTEE ON APPROPRIATIONS.
MARCH 18, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 28, 1987	SECOND READING, CONCURRED IN AS AMENDED.

MARCH 30, 1987	THIRD READING, CONCURRED IN. AYES, 77; NOES, 21.
	RETURNED TO SENATE WITH AMENDMENTS.
	IN THE SENATE
APRIL 3, 1987	RECEIVED FROM HOUSE.
	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 4, 1987	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.

Senate BILL NO. 161

INTRODUCED BY Bob Brown Blaylock Mercer Bradley Stapleton Story

A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE SUNSET PROVISION OF THE TWO TEMPORARY ASSOCIATE JUSTICE POSITIONS ON THE SUPREME COURT AND MAKING THE TWO POSITIONS PERMANENT; REPEALING SECTION 5, CHAPTER 683, LAWS OF 1979."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Repealer. Section 5, Chapter 683, Laws of 1979, is repealed.

-End-

INTRODUCED BILL
SB 161

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB161, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
An act repealing the sunset provision of the two temporary associate justice positions on the Supreme Court and making the two positions permanent; repealing Section 5, Chapter 683, Laws of 1979.

ASSUMPTIONS:
1. Effective date January 1, 1989.
2. Staffing would include two associate justice positions, four law clerk positions and a secretary position.

FISCAL IMPACT:
Expenditures:

	FY89		
	*Current Law	Proposed Law	Difference
General Fund	$114,906	$229,812	$114,906

* Reflects expenditures for one-half of FY89, the time the current law expires.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
Costs of $229,812 per year will be added to the state's budget.

David L Hunter DATE 1/21/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE
JOE MAZUREK, PRIMARY SPONSOR

Fiscal Note for SB161, as introduced.

SB 161

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 161

INTRODUCED BY Bob Brown Blaylock Mercer Bradley Van Valkenburg Lorian

A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE SUNSET PROVISION OF THE TWO TEMPORARY ASSOCIATE JUSTICE POSITIONS ON THE SUPREME COURT AND MAKING THE TWO POSITIONS PERMANENT; REPEALING SECTION 5, CHAPTER 683, LAWS OF 1979."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Repealer. Section 5, Chapter 683, Laws of 1979, is repealed.

-End-

SECOND READING
SB-161

Senate BILL NO. 161

INTRODUCED BY Bob Brown Playfoot Spaeth MERCER Bradley

A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE SUNSET PROVISION OF THE TWO TEMPORARY ASSOCIATE JUSTICE POSITIONS ON THE SUPREME COURT AND MAKING THE TWO POSITIONS PERMANENT; REPEALING SECTION 5, CHAPTER 683, LAWS OF 1979."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Repealer. Section 5, Chapter 683, Laws of 1979, is repealed.

-End-

THIRD READING
SB161

SENATE BILL NO. 161

INTRODUCED BY MAZUREK, B. BROWN, BLAYLOCK, GOULD, CRIPPEN, SPAETH, MERCER, BRADLEY, VAN VALKENBURG, LORY, QUILICI

A BILL FOR AN ACT ENTITLED: "AN ACT ~~REPEALING~~ EXTENDING THE SUNSET PROVISION OF THE TWO TEMPORARY ASSOCIATE JUSTICE POSITIONS ON THE SUPREME COURT ~~AND MAKING THE TWO POSITIONS~~ PERMANENT FOR AN ADDITIONAL 8 YEARS; ~~REPEALING~~ AMENDING SECTION 5, CHAPTER 683, LAWS OF 1979."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. ~~Repealer.~~ Section 5, Chapter 683, Laws of 1979, is ~~repealed.~~ AMENDED TO READ:

"Section 5. Effective period. This act is effective until the first Monday of January, ~~1989~~ 1997, at which time the number of associate justices authorized by this act shall revert to four. The code commissioner is directed to make appropriate changes in the Montana Code Annotated to reflect the intent of this section."

-End-

Montana Legislative Council

REFERENCE BILL
SB-161

COMMITTEE OF THE WHOLE AMENDMENT

HOUSE

~~3-20-87~~ DATE

~~17:30~~ TIME

MR. CHAIRMAN: I MOVE TO AMEND ~~SB 161~~

~~3rd~~ reading copy (~~blue~~ Color) as follows:

1) Title, line 4.
Strike: "REPEALING"
Insert: "EXTENDING"

2) Title, line 6.
Strike: "AND MAKING THE TWO POSITIONS PERMANENT"
Insert: "FOR AN ADDITIONAL EIGHT YEARS"

3) Title, line 7.
Strike: "REPEALING"
Insert: "AMENDING"

4) Page 1, line 10.
Strike: "Repealer."

5) Page 1, line 11.
Strike: "repealed"
Insert: "amended to read:
"Section 5. Effective period. This act is effective until the first Monday of January, ~~1989~~ 1997 , at which time the number of associate justices authorized by this act shall revert to four. The code commissioner is directed to make appropriate changes in the Montana Code Annotated to reflect the intent of this section""

ADOPT

REJECT

Mark

3201730T.CW

Rep. Marks

1/20 REFERRED TO NATURAL RESOURCES
2/11 HEARING
2/18 DIED IN COMMITTEE ON TIE VOTE

SB 160 INTRODUCED BY MAZUREK
REVISE GENERAL LAWS ON STATUTES OF LIMITATION
BY REQUEST OF MONTANA SUPREME COURT AND THE SUPREME COURT COMMISSION ON THE RULES OF EVIDENCE

1/20	INTRODUCED		
1/20	REFERRED TO JUDICIARY		
1/29	HEARING		
2/04	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/07	2ND READING PASSED	47	0
2/10	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/18	REFERRED TO JUDICIARY		
3/13	HEARING		
3/23	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	90	0
3/30	3RD READING CONCURRED	97	1
	RETURNED TO SENATE WITH AMENDMENTS		
4/02	2ND READING AMENDMENTS CONCURRED	49	0
4/03	3RD READING AMENDMENTS CONCURRED	48	0
4/06	SIGNED BY PRESIDENT		
4/07	SIGNED BY SPEAKER		
4/07	TRANSMITTED TO GOVERNOR		
4/09	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 441 EFFECTIVE DATE: 10/01/87		

SB 161 INTRODUCED BY MAZUREK, BROWN, R., BLAYLOCK, ET AL.
REPEAL SUNSET PROVISION OF TWO SUPREME COURT ASSOCIATE JUSTICE POSITIONS

1/20	INTRODUCED		
1/20	REFERRED TO JUDICIARY		
1/21	FISCAL NOTE REQUESTED		
1/30	HEARING		
2/05	COMMITTEE REPORT--BILL PASSED		
2/09	FISCAL NOTE RECEIVED		
2/09	2ND READING PASSED	37	12
2/11	3RD READING PASSED	33	15
	TRANSMITTED TO HOUSE		
2/18	REFERRED TO STATE ADMINISTRATION		
3/05	HEARING		
3/05	COMMITTEE REPORT--BILL CONCURRED		
3/07	REREFERRED TO APPROPRIATIONS		
3/18	HEARING		
3/18	COMMITTEE REPORT--BILL CONCURRED		
3/28	2ND READING CONCURRED AS AMENDED	82	11
3/30	3RD READING CONCURRED	77	21
	RETURNED TO SENATE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	50	0
4/04	3RD READING AMENDMENTS CONCURRED	47	2
4/06	SIGNED BY PRESIDENT		
4/06	SIGNED BY SPEAKER		
4/06	TRANSMITTED TO GOVERNOR		

4/07 SIGNED BY GOVERNOR
CHAPTER NUMBER 362 EFFECTIVE DATE: 10/01/87

SB 162 INTRODUCED BY MAZUREK
GENERAL REVISION OF PROPERTY TAX COLLECTION, DELINQUENCY, AND DEED PROCESS
BY REQUEST OF REVENUE OVERSIGHT COMMITTEE

1/20	INTRODUCED		
1/20	REFERRED TO TAXATION		
1/31	HEARING		
2/12	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/16	2ND READING PASSED AS AMENDED	50	0
2/18	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO TAXATION		
3/26	HEARING		
4/09	COMMITTEE REPORT--BILL CONCURRED		
4/11	2ND READING CONCURRED	73	8
4/13	3RD READING CONCURRED	87	8
	RETURNED TO SENATE		
4/16	SIGNED BY PRESIDENT		
4/20	SIGNED BY SPEAKER		
4/20	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 587 EFFECTIVE DATE: 4/23/87		

SB 163 INTRODUCED BY BOYLAN, LYBECK, MERCER, ET AL.
LIMITING ASSETS OF MERGED BANKS

1/21	INTRODUCED		
1/21	REFERRED TO BUSINESS & INDUSTRY		
2/03	HEARING		
2/13	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/18	2ND READING PASS MOTION FAILED	14	34
2/18	2ND READING INDEFINITELY POSTPONED	35	13

SB 164 INTRODUCED BY GAGE
REIMBURSEMENT TO DEPARTMENT OF JUSTICE FOR EMPLOYEE TIME SPENT ON SUBPOENAS
BY REQUEST OF DEPARTMENT OF JUSTICE

1/21	INTRODUCED		
1/21	REFERRED TO JUDICIARY		
1/21	FISCAL NOTE REQUESTED		
1/22	FISCAL NOTE RECEIVED		
1/30	HEARING		
2/05	COMMITTEE REPORT--BILL PASSED		
2/09	2ND READING PASSED	35	13
2/11	3RD READING PASSED	44	4
	TRANSMITTED TO HOUSE		
2/18	REFERRED TO JUDICIARY		
3/13	HEARING		
3/23	COMMITTEE REPORT--BILL CONCURRED		
3/27	2ND READING CONCURRED	86	0
3/28	3RD READING CONCURRED	87	4
	RETURNED TO SENATE		
4/01	SIGNED BY PRESIDENT		
4/02	SIGNED BY SPEAKER		

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 30, 1987

The eighteenth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on January 30, 1987, by Chairman Joe Mazurek in Room 402 of the state Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF SENATE BILL 164: Senator Gage, District 5, introduced SB 164, which was requested by the Department of Justice. He said trials do not pay state employees when they are subpoenaed to appear in a trial, and because a trial does not pay these people, the department feels there is some abuse with putting them on the bottom of the ladder as far as using their testimony. He said this bill provides billing the party that subpoenaed the department employee, so that the department will be reimbursed for the employee's time spent on the subpoena.

PROPONENTS: Kim Kradolfer, Assistant Attorney General of the Department of Justice, supported the bill because there is a similar statute that will be repealed by this bill (Section 44-1-502, MCA), that is very handy to highway patrolmen, and this just adds department employees to this. The bill also includes criminal matters, so it will cover the forensic scientists, fire marshalls, and the employees of the identification bureau, all of which are called quite often in criminal matters. She said the criminal trial using forensic scientists is where abuses are occurring. She said it is not unusual for a forensic scientist to sit for four days to testify for 45 minutes. She felt if we have this bill in effect, maybe the courts will be a little more considerate of our people and their time.

OPPONENTS: There were no opponents.

DISCUSSION BY THE COMMITTEE ON SENATE BILL 164: Senator Mazurek asked what the charge will be for a person to testify in a criminal matter.

Ms. Kradolfer said she felt they would not charge for time testifying in a criminal matter, but if he was testifying in a civil matter, we would break it down into the hourly wage we were paying him and compensation for what he lost at his job, and expenses that incurred during this time. To her knowledge no policeman has been compensated for a criminal trial.

Senator Mazurek asked Ms. Kradolfer if the department would object to the committee amending out county people in billing in criminal trials. She did object because she said the county attorneys are one of the main abusers.

Senator Gage closed by saying when these people are waiting to testify, there is work to be done back at their place of employment, so it is just adding to the workload of the department, which causes the department to hire extra people while others are testifying.

Senator Mazurek released the chair to Senator Crippen.

CONSIDERATION OF SENATE BILL 161: Senator Joe Mazurek, District 23, chief sponsor of SB 161, which keeps the Montana Supreme Court at 7 members instead of reducing to 5 members. He explained that the 1979 Legislature passed a bill to add 2 seats to the court to make it 7 members. At the time it was done, the bill had a sunset clause which would terminate on the first Monday of January, 1989. Senator Mazurek said it is no secret that Montana is a litigate state. He distributed charts by Jim Opendahl, Supreme Court Administrator. He explained the statistics on case filings and written opinions in Montana. (Exhibit 1, page 2) He showed how much higher Montana's statistics were with 7 members, against neighboring states. He explained how the chart shows the substantial use in case filings and written opinions if the court went back to five members. He felt one reason Montana is so much higher in case loads is we have adopted a new constitution in 1972, which established a new standard of policy in the state. He said the legislature has passed laws that have added to their burden, such as the Montana Administration Procedures Act, Major Facilities Citing Act and amendments to the Workers' Compensation Act. We have created a Workman's Comp. Court; we have added a State Tax Appeal Board; we have adopted

a Uniform Probate Code; a new marriage and divorce code; we have implemented a new Human Rights Act and established a Human Rights Commission; we have Water Court; a new criminal code, and a new Youth Court. He said all of these were adopted in the 1970's and have caused litigation to rise since. He felt if the bill was not passed the court would have serious difficulty in getting their work load done and he said in Montana, unlike other states, every litigant has the constitutional right to appeal to the Supreme Court on their case for final disposition. He said it would take a constitutional change to stop some cases from being taken to the Supreme Court. It has also been suggested the state set up an intermediate appealate court similar to Idaho, but he felt it would not be as cost effective as the 7 member Supreme Court. Senator Mazurek said there have been many editorials stating support for the 7 member court. The fiscal note to SB 161 said the bill would cost $114,906 in the coming biennium because we're only dealing with one half the biennium. He felt this was a small cost considering the delays and human factors. He felt the issues before the legislature this session in the areas of tort reform and worker's compensation reform are going to put a lot of new laws on the book, which will cause more litigation. He said if we go back to 5 judges, we will increase the human suffering factor. Senator Mazurek stated the Chief Justice of Court will testify as will Jim Opendahl, Administrator of the Supreme Court.

PROPONENTS: Pat Melby, Helena, representing the State Bar of Montana, echoed Senator Mazurek's feeling that it is essential to keep the 7 member court in Montana. He stated these are hard economic times which bring crime increases, business closures, and more litigation. He said reducing the court to 5 members will hurt constituents more than saving a few dollars. He strongly urged passage of Senate Bill 161.

Steve Brown, Chairman of the State Bar's Committee on Judicial Compensations and Selection, and representing himself, said at least as far as the State Bar is concerned, there needs to be 7 justices to get the work done in a timely manner. He felt the outcome of this session will cause more litigation, thus, we must keep a 7 member court.

Neil Ugrend, a lawyer from Great Falls, said he has a general practice in Great Falls and he felt the quality of opinions would suffer if it went back to a 5 member court. He stated it is very important to the citizens to have quality opinions in a short period of time. He urged passage of the bill.

Jean A. Turnage, Chief Justice of the Montana Supreme Court, testified in support of Senate Bill 161. He explained a letter from Judge Leonard H. Langdon, District 17, Glasgow, who thought the court would survive with five members, but there would be much more delay in the process of the court. Judge Langdon said in the delay of litigation, the human cost cannot be measured in dollars, but it is an expense that is unacceptable. He stated it is only natural when you are behind in your work, you tend to get further behind, and you can't fast-forward an opinion without loosing some quality in the opinion. He said he would answer any questions.

OPPONENTS: Frank Morrison, Justice of the Supreme Court, represented himself in opposing Senate Bill 161. He said he has the greatest respect for the Supreme Court, but there are two sides to this issue and times are tough and it should make us very carefully scrutinize when asking for money. He said he was going to give the other side because he doesn't think it will be given. He pointed out his leaving the court has nothing to do with his opposing the bill because his interest in quality justice and speedy administration of that justice will be just as high. He said he has questioned the 7 member court for over a year, and it wasn't until two weeks ago that Steve Shirley of Lee newspapers called me and asked why I questioned the 7 member court. He felt the case filings that Jim Opendahl gave were the least reliable indicator for the work load in the Supreme Court, and the reason is it includes every letter sent over to the clerk's office and it doesn't indicate the contested cases that take our time. He also said many cases are settled and never heard by the court, so what you look at is the number of opinions that are issued by the Montana Supreme Court this year. Justice Morrison showed charts showing the work load of the court from 1982 to 1986 and cases argued from 1983 to 1986. He also had a break down of cases argued. (Exhibit 2) He stated Montana ranked 47th out of 50 states in litigiousness, so he feels Montana is not overworked. He explained his chart on opinions and how there are up years and down years, and the reason is the cases that come out in December and January are cases near completion. He felt

the opinions were level through 1982 to 1986 because of this reason. He said it averages about 50 per justice, or 300 a year, and not all cases are treated the same; the real difficult ones are argued in front of the court, while the rest are not. He explained the cases argued in the court room take up to 4 times the number of hours spent per justice on the other cases not argued. He pointed out from the chart that the number of argued cases has dropped from 1983 with 159 cases to 1986 with 86 cases, which eases the work load. He said the reason for this is the decline in criminal appeals. He stated more criminal cases are heard in Supreme Court than civil because when people's liberty is being taken away, there tends to be more oral arguments. He commented there are more constitutional questioning in criminal cases also. He said there is a decline in criminal appeals because of the Supreme Court and the law enforcement. He showed the committee how the criminal appeals have gone from 78 in 1984 to 48 in 1986. (See Exhibit 2) Because of this he feels the work load on the court has lessened. He said he would not be here today if he thought a 5 member court would cause long delays in opinions, because opinion writing is only 10% of the time used. The rest is used on reading briefs and making judgments. He stated a normal work load is 375 cases and 275 are not argued. Each case is given to a 5 judge panel on a rotating basis, so that puts each judge having 2 out of 7 cases to work on, for a total of 195 unargued plus 100 argued. He felt the workload was reduced. He commented it only takes 3 judges instead of 5 to give an opinion on a divorce case, so he felt the work load would not increase for a 5 member court because of the statistics he presented to the committee. He felt since he has been on the Supreme Court he has not seen a substantial rise in litigation and doesn't think there will be in the future. He felt the quality of opinions would still continue to be high with a 5 member court. He said he would answer any questions.

QUESTIONS FROM THE COMMITTEE ON SB 161: Senator Pinsoneault asked Senator Mazurek if he agrees with Justice Morrison that you don't need 5 judges to write an opinion on a divorce case.

Senator Mazurek replied the majority of the court must decide on a decision because that is the law, but if you don't have unanimity in the 3 judge panel out of a 5 judge court, then the rest of the judges are going to have to hear it, and that could be a problem. He said with a 7 member court and a 5 judge panel, you need 4

from the panel to agree and then the matter can be dealt with because that is a majority of a 7 member court.

Senator Pinsoneault redirected the question to Jean Turnage. Justice Turnage responsed that if the 5 member panel can't get 4 to agree, it goes before all 7, which happens quite a bit.

Senator Halligan thought the bill should have been sent to Finance and Claims because they deal with budgets all the time and he stated no information was given to the committee on the budget of the Supreme Court, the staff, and who does what. He said he could not make a decision on this until he has information on their budget. Mr. Opendahl said he would provide information on the budget to the committee.

Senator Blaylock asked Justice Morrison to respond. Justice Morrison replied it is not clear that a majority is needed on the court for a decision in the Constitution, but in the statute created by the legislature when they added the 2 members to the Supreme Court, it said a majority of the whole court was needed for a decision. He said the Constitution says it just takes a majority, so it would allow 3 panel judges to work pretty well if the Constitution interpretation of just a majority is to be used. He felt 90% of the cases that are on briefs are unanimous decisions; it is the cases in the courtroom that are split. The same procedure is for a 5 member and a 3 member panel; when there is not a majority of the court, it goes before the full court. He felt the Constitution interpretation does not mean majority of the court, but just a majority.

Senator Blaylock asked Justice Morrison if the legislature had not extended the court to 7, would he be one that would not have been a justice. Justice Morrison replied he does occupy one of the additional seats. Senator Blaylock questioned him about the work load the years he has been on the court. Justice Morrison felt the load has decreased. Senator Blaylock asked if the 2 positions created were really needed in the first place. Justice Morrison replied the positions were not essential, but at the time when the legislature had the money, it improved the court. Senator Blaylock asked him why he did not speak against the additions in 1979. Justice Morrison stated he was an outsider then because he was not in the court at the time.

Senator Galt asked about our neighboring states' courts. Justice Morrision replied Idaho has a 5 judge court and a 3 judge appeals court. He felt Montana should do this. He said Utah and Nevada have a 5 judge court and no appeals court and they have a much heavier load than us because they are a more populace state. He said Alaska has a 5 judge court and a 3 judge appeals court. Jim Opendahl referred to his chart (Exhibit 1, page 2). He said he did not chart out Idaho because of their 3 judge appeals court which was different from Montana's court system.

Senator Halligan said he felt, like Justice Morrison, case filings are not the best measure to look at the justices' work load.

Senator Mazurek said to look at the statistics on opinions per justice (Exhibit 1, page). They have gone up, and to have a 5 member court will increase the opinions even more. He said he did some quick calculations on Montana's litigiousness, based on case filings, against other states. Wyoming's case filings are .6 per 1000, North Dakota's are .5 per 1000, South Dakota's are .53 per 1000; and in Montana, they are .78 per 1000. He said Montana is much higher in case filings, and those numbers will go up.

Senator Blaylock asked Mr. Opendahl what kind of cost would it be to have an appelate court like Idaho, that would sit for a 2 month period at a time during a 2 year biennium. Jim Opendahl answered the cost of the present system for a year with 2 extra justices is about $250,000 a year. He felt if you went to a 3 member appeals court on the side, the personal services for 3 people would be around $350,000 to $400,000, plus operating expenses, so it would be half a million a year and a million for a biennium. He stated each state is different, so it is hard to compare.

Senator Blaylock inquired how far the Supreme Court was behind in their opinion writing in 1979-1980 as compared to today. Mr. Opendahl replied his handout on case filings can show how far they are behind now, and how far they were behind then.

Senator Crippen asked Karl Englund if trials have increased in the courtroom. Mr. Englund replied he had no status on that. Senator Crippen asked why he did not testify, and if by not testifying, is he in favor of a 5 member court.

Mr. Englund answered he and the Trial Lawyers Assn. had so much to do that they did not take an official stand on this matter.

Senator Halligan asked how quickly were opinions issued with 5 justices compared to 7 justices. Justice Morrison responded the statistics would not be comparable because the 5 justices in 1979 were hearing at least one-half of the cases in the courtroom, where now we don't argue that many cases in the courtroom. Because the 5 member court spent so much time in the courtroom, they had less time to write opinions, where now we have more time because we are not in the courtroom as much. He said the court now doesn't have utility rate cases, which are complex. He stated in 1979, a utility rate case would take up the time of 20 divorce cases. He felt many cases are settled before going to the Supreme Court now because of the expense. He stated we are not in the courtroom and they were, so information would not be valid.

Senator Halligan asked if there is any way of knowing the average delay of an opinion. Justice Morrison stated a dispute in the court members delays an opinion. He said the number 1 delay is the typing of the case, and the number two reason is the dispute between the members of the court.

Senator Crippen asked Justice Morrison why is it now you are here before us with concern for finances and the economic shape of our state, when before, the legislature tried to control the budget of the Supreme Court. Now you are telling us we need to control the Supreme Court.

Justice Morrison answered he was not aware of the problems four years ago or two years. He stated he started talking about this a year ago and he also stated he was not here to advocate a seven or five judge court, but to show the other side of the coin, and if you are not interested in both sides, then disregard my information.

Senator Crippen told Justice Morrison we are always interested in both sides.

Senator Beck asked Justice Turnage what he thought of the decrease in case loads. Justice Turnage responded that he was not sure the number of oral arguments are decreasing. He stated that assuming these statistics are

are right, doesn't mean the case load has gone down because the number of written opinions has gone up.

Senator Mazurek closed by saying he would like to review Justice Morrison's statistics with Mr. Opendahl, and he felt the Constitution is clear on the majority of the court making a decision. He thought people would not be happy that only 2 or 3 justices are acting on their case when there are five that could act. He said if you want an appeals court, then you better be prepared to add money to the fiscal note. He said he thought Justice Morrison brought up some good points and he hopes to look over his information, but he feels what we have provided shows it is essential to the state to keep 7 justice court members.

EXECUTIVE ACTION:

ACTION ON SENATE BILL 189: Valencia Lane gave the committee amendments on the bill. (Exhibit 3) Ms. Lane explained the amendments were new amendments for the bill.

Senator Pinsoneault wondered if the bill should be limited to private or public record.

Senator Mazurek said the main concern of the bill is to make sure the school doesn't disclose the arrest records of students to anyone.

Senator Pinsoneault said the bill should state only school officials can have knowledge of the students' arrest records.

Senator Beck suggested just to have a record of arrests in the court, but not at the school.

Senator Crippen said that no matter how hard people try in schools to keep something a secret, it becomes public knowledge. He understood the counselors concern about having the right to know what student was arrested for drugs or alcohol, but he felt the public knowledge will hurt the student in the future.

Senator Beck said the courts should just handle what record the arrests go into.

Senator Brown said it is double or triple dose to a kid if he is caught by the police; the parents ground him,

DATE Jan. 30th

COMMITTEE ON

VISITORS' REGISTER

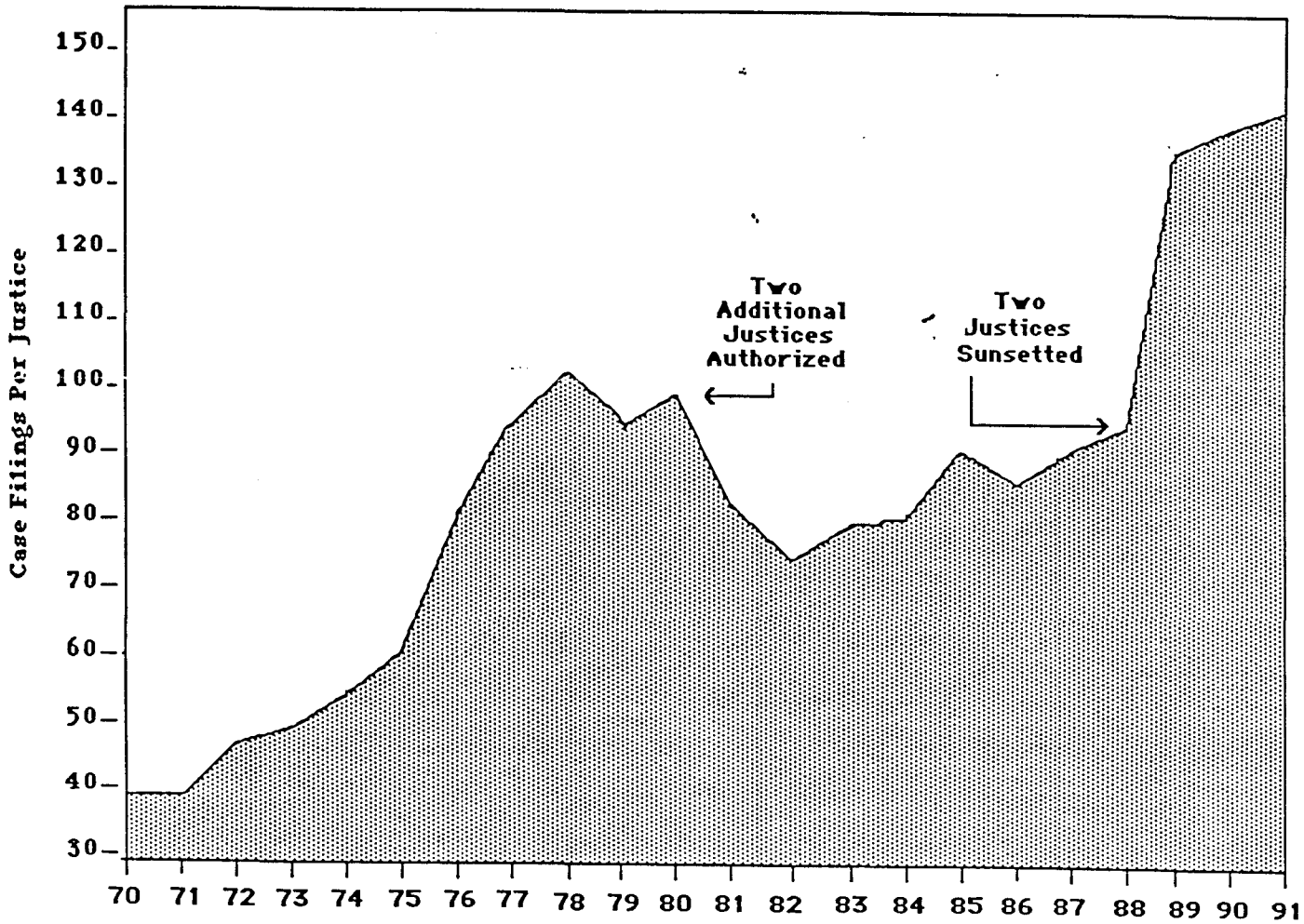
NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Pat Melby	State Bar of Mont	SB161	✓	
Kurt Krueger	Dept. of Justice	SB164	✓	
[illegible]	Supreme Ct	SB161	✓	
Steve Brown	Self	SB 161	✓	
[illegible]	MLA	#B302		✓
Frank C. Morrison Jr	self	~~SB~~ 161		✓
Kimberly A. Kradolfer	self	SB161	✓	

(Please leave prepared statement with Secretary)

SENATE JUDICIARY
EXHIBIT NO. 1
DATE Jan. 30, 1987
BILL NO. SB 161

MONTANA SUPREME COURT

ACTUAL AND PROJECTED CASE FILINGS PER JUSTICE 1970 TO 1991

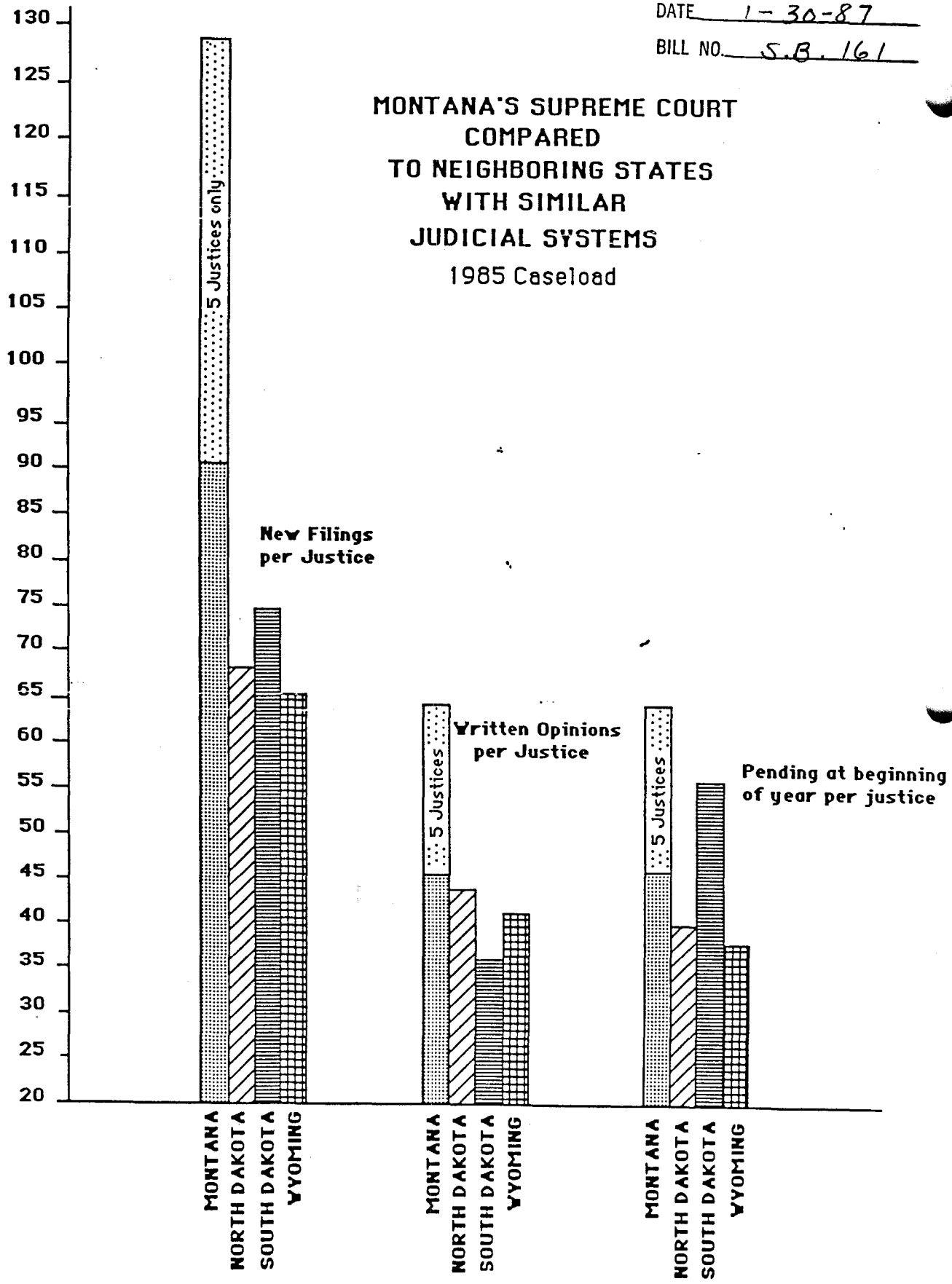


PROJECTIONS PAST 1986 ARE ESTIMATES DONE BY THE NATIONAL CENTER FOR STATE COURTS, WILLIAMSBURG, VA.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 1-30-87
BILL NO. S.B. 161

MONTANA'S SUPREME COURT COMPARED TO NEIGHBORING STATES WITH SIMILAR JUDICIAL SYSTEMS

1985 Caseload



SENATE JUDICIARY
EXHIBIT NO. 1
DATE 1-30-87
BILL NO. S.B. 161

MONTANA SUPREME COURT CASELOAD

	FILINGS	STILL ACTIVE	OPINIONS
1991	712		
1990	694		
1989	675		
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	*PROJECTED		
1986	602	379	374
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* Projections are those made by the National Center for State Courts, Williamsburg, Virginia, using the period from 1976 to 1986.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 1-30-87
BILL NO. S.B. 161

MONTANA: CASELOAD PER JUSTICE

		FILING PER JUSTICE	STILL ACTIVE PER JUSTICE	OPINIONS PER JUSTICE
5 Justices	1991	142		81
	1990	139		79
	1989	135		77
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	1987	91		52
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	1973	49	35	39
	1972	46	27	29
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SENATE JUDICIARY
EXHIBIT NO. 2
DATE Jan. 30, 1987
BILL NO. SB 161

January 30, 1987 Justice Frank Morrison's testimony on SB 161.

OPINIONS

1982	340
1983	286
1984	391
1985	302
1986	374

* 50 per justice = 300 per year.

CASES ARGUED

1983	159
1984	124
1985	112
1986	86

	1984	1985	1986
Divorce	37	37	46
Contracts	30	32	35
Con. Law	30	17	34
Criminal Law *	78	36	48
Ins.	13	14	12
Neg.	7	11	15
Work Comp.	22	24	29

ASSUMED CASES = 375
ARGUED = 100
275 considered without arguement

7 Judge Ct. has 5 judge panels. 5/7 of 275 = 195 + 100 = 295

5 Judge Ct. has 3 judge panels. 3/5 of 275 = 165 +100 = 265

SENATE JUDICIARY
EXHIBIT NO. 3
DATE Jan. 30, 1987
BILL NO. SB 189

Alternative proposed amendments to SB 189:

1. Title, line 4.
Following: "PROVIDE FOR"
Strike: "PUBLIC"

2. Title, line 5.
Following: "DISCLOSURE"
Insert: "TO CERTAIN SCHOOL OFFICIALS"

3. Title, line 7.
Following: "SUBSTANCE"
Insert: "OR A DANGEROUS DRUG"

4. Page 1, line 24.
Following: line 23
Strike: "Publicity may not be withheld as to the"
Insert: "The"

5. Page 2, line 1.
Following: "45-5-624"
Insert: "or 45-9-102 may be disclosed by law enforcement officials to the administrative officials of the school in which the youth is a student"

6. Page 2, line 2 through line 3, page 3.
Strike: section 2 in its entirety

7029v/L:JEA\WP:jj

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 5, 1987

The meeting of the State Administration Committee was called to order by Chairman Sales on March 5, 1987 in Room 437 of the State Capitol at 9:00 a.m.

ROLL CALL: Reps. Moore and Peterson were excused. All other committee members were present.

CONSIDERATION OF SENATE BILL NO. 123: Senator Harding, Senate District # 25 and sponsor of the bill, stated the purpose of the bill is to make the register of candidates maintained by election administrators and the secretary of state for partisan and nonpartisan elections discretionary, as two mandatory ledgers are already maintained forever.

PROPONENTS: **Greg Jackson, Montana Clerk and Recorders Association,** supported the bill and stated that a unanimous resolution was passed to make maintenance of the register discretionary.

Joanne Peres, Fergus County Clerk and Recorder, and Geraldine Nile, Rosebud County Clerk and Recorder, also supported the bill.

OPPONENTS: None.

DISCUSSION OF SENATE BILL NO. 123: Rep. Fritz asked whether the action would seriously damage the historical record. Senator Harding closed discussion on Senate Bill No. 123 by replying that two other books are permanently maintained.

CONSIDERATION OF SENATE BILL NO. 124: Senator Harding, Senate District #25 and sponsor of the bill, stated that the bill provides for the posting of election returns at the counting place rather than the polling place. Since ballots are counted at the courthouse, excess mileage is incurred to post returns at polling places.

PROPONENTS: Geraldine Nile, Rosebud Clerk and Recorder, supported the bill stating that one polling location in Rosebud County is 90 miles from the courthouse.

OPPONENTS: None.

DISCUSSION OF SENATE BILL NO. 124: Senator Harding closed discussion on Senate Bill No. 124 by urging the committee to pass the minor housekeeping bill.

CONSIDERATION OF SENATE BILL NO. 161: Senator Mazurek, Senate District #23 and sponsor of the bill, stated that the purpose of the bill is to eliminate the sunset clause that would reduce the Supreme Court judges from seven to five. In response to a backlog of cases and lengthy delays, the legislature passed a bill authorizing two additional justices, which sunsets January 1, 1989 unless affirmative action is taken. The Senate Judiciary Committee unanimously rejected Senator Mazurek's offer to place another sunset provision in the bill that would be effective in 1997.

The Montana Supreme Court must accept all appeals from any litigant appealing a district court decision. Several other states have intermediate appellant courts as an avenue of appeal. The number of filings and written opinions per justice compared with the five-member courts in North Dakota, South Dakota, and Wyoming show that Montana is a litigious state (Exhibit #1, p. 2). Idaho, Utah, and Alaska have similar economies but are not compared because those states have intermediate appellant courts. Utah just placed a five-member intermediate appellant court into operation to handle a 600-case backlog, which will take approximately two years to resolve. An intermediate appellant court will be much more expensive than continuing two additional justices.

Filings have increased because the court will be called on to interpret legislature's recent public policy decisions: 1) a new constitution; 2) the Montana Administrative Procedures Act; 3) a major facilities sighting act; 4) a new State Tax Appeal Board; 5) reappraisal for which an estimated 15,000 appeals are now pending; 6) a new marriage and divorce act; 7) a new criminal code; and 8) a new youth court act. Legislation being considered this session such as tort reform, worker's compensation

legislation, and tax reform proposals will also increase the workload. The number of required opinions per justice will increase dramatically with five justices (Exhibit #1, pp. 6 & 7).

The need for two additional justices is more important now than in 1979. If the bill is not passed, it will have a very serious impact on the justice system; the effect of reducing judges will be a 30% workload increase on the remaining justices. Senator Mazurek requested the committee to rise above the $114,000 biennium fiscal note, which reflects current level of services, and recognize the need to continue the court at its present size.

PROPONENTS: George Dalthorp, Billings attorney and member of the Montana State Bar, reported that the State Bar has a near consensus position in favor of continuing the seven-member court because a drop back to a five-member board would lead to a: 1) delay in justice as a backlog of cases will develop similar to 1979; 2) decline in the quality of decisions because the tremendous volume would increase the workload by approximately 30%; and 3) long-run decline in the quality of the justice system. In addition, the court is experiencing difficulty attracting qualified lawyers to run for the court; Montana justices are paid the lowest salary in the nation and if an absolutely oppressive workload is added, capable lawyers might not want to work for the Supreme Court. The court will have increased work and lawyers will be frustrated, but it is the citizens who will be hurt. Justice delayed is justice denied; when a person is involved in litigation it becomes all encompassing to all other activities.

Pat Melby, attorney and Montana State Bar lobbyist, stated that the State Bar has given its full support to the bill, and no bill is more important this session. The bill also has the full support of the Montana Trial Lawyers Association and the Montana Association of Defense Counsel. The Montana Supreme Court justices are the lowest paid in the nation. If workload is increased by 30%, the court will not be able to continue to attract the quality of justices needed.

Ronald Waterman, Helena attorney and past member of the American Judicial Society, supported the bill and previous testimony. Justices need the time to understand the ramifications of a case not only upon participants, but society as a whole. The time to contemplate a case is important in ensuring the quality of justice society demands. The caseload requires the justices to deliver an opinion a week yearly. The last case Mr. Waterman submitted was 20 volumes long with 348 exhibits, and required

consideration of seven major issues and multiple subissues on matter requiring time to understand the full implications of the case on the litigants and society as a whole. Returning to a five-member court is ill-advised.

At the federal level the Ninth Circuit fell so far behind during the 1970s that it took three years between the time appeals were lodged and decisions rendered. Just before oral argument supplemental briefs had to be filed because the law had dramatically changed. The system proved to be deplorable and resulted in a doubling of the Ninth Court of Appeals at the federal appellant level. Reducing the size of the Supreme Court would be "penny wise and pound foolish".

Margaret Davis, League of Women Voters, stated that the public is generally not interested in the court system unless public attention is drawn to a specific case, or until people are personally involved either as a plaintiff or defendant. The Legislature's actions are subject to litigation. If the court's ability to deal with matters of legitimate public concern are weakened, government's ability to deal with problems is impeded. A weak judiciary does not help the legislative or the executive branch.

Steve Brown, Helena attorney, stated he originally sponsored the legislation in 1979, but there has been no statistical change in the workload to justify going back to a five-member court. The increased workload is due in part to a great number of bills that have been enacted as legislators respond to demand from constituents. Since 1973, people have insisted on writing public policy in many significant areas which has resulted in substantial litigation: 1) the 34% tax appeal issue which significantly affected businesses; 2) three stream access cases which are vitally important to farmers as well as recreationalists; and 3) initiatives from nuclear issues to lobbyist disclosure and tort reform. It would be a terrible mistake to go back to a five-member board.

Jim Oppedahl, Supreme Court Administrator, explained that exhibit # 1 is a broad historical look at the forest and not just the trees: 1) the case filings per justice are trended showing the caseload levelling in 1979 when two judges were added, and is projected to 1988 and 1989 showing a workload increase; and 2) Montana's caseload is also compared with other states and shows solid evidence that Montana's workload is heavy by comparison with workload experienced in South Dakota, North Dakota, and Wyoming. Other states have responded by adding judges, legal

support staff, or adding additional judiciary capabilities when caseload has reached the level Montana is experiencing. Utah just added an additional seven-member intermediate court of appeal to handle its two-year backlog.

Justice Weber, spoke in favor of the bill and agreed with the analysis presented. When cases sit before a court for more than three years, clients are properly so discouraged that they seek any way to resolve the issue except wait for an appeal; that is a horrible situation. Justice Weber discussed the process: 1) a case is assigned to a justice to write an appeal plan and recommend either an oral or written argument, which is brought before all seven members of the court. If time is short, the simple solution is to let one person decide; if time is too short, the law clerks may decide. The process aims at finding critical cases to be argued; and 2) a judge is assigned to write an opinion after argument is heard, which is then voted on by the group. Twenty cases were voted on yesterday, for example. Briefs are read before oral argument. If time is too short, the briefs might not be read. An adequate opportunity to think the case over is also needed. Law clerks assist in picking out relevant parts of the transcripts. If time is cut down, an opinion might be approved because the case sounds reasonable based on the facts of the law. That is called a one judge opinion and it has happened, but the process is not designed for this purpose. There is a mechanical way of getting through increased workload, but it will result in a much inferior work product.

Chief Justice Gene Turnage, supported the bill stating that the only recourse for appeal is the Supreme Court, which is not only a fundamental constitutional due process right, but a common sense right. It would be unacceptable to not have an appeal avenue for the litigant. As far as the litigant is concerned no case is frivolous, and the Supreme Court must treat all appeals carefully and with deliberation. The result of a five-member court will be delay, which is costly to the taxpayers. The hidden human cost of stress cannot be measured in dollars. Yet there is no acceptable way to crash through deliberation on a case. The internal operating rules will have to be extended. In 1986, the members of the court ruled on 374 full-blown opinions per justice; with a five-member system, approximately 75 opinions per justice will be required and is not realistic.

People who find themselves rejected at the executive level turn to the courts. Montana needs a judiciary of competence, and with the workload facing the judiciary, this will not encourage the kind of competence necessary.

Laws are made three ways: 1) through the initiative process; 2) the legislative process; and 3) the common law decision when the Supreme Court issues an opinion of precedential value. If power is concentrated into fewer hands, citizens do not receive the input they are entitled to and justice will be weakened.

Rep. Paul Pistoria, House District #36, stated that he was involved in a Supreme Court case for almost a year, which necessitated paying interest on $30,000 in bonds. When the two justices were added, the case was heard a month later and it took another month to decide the case. Cases many times involve a citizen's lifetime savings. Rep. Pistoria urged the committee to pass the bill to protect citizens by having less delay.

OPPONENTS: None.

DISCUSSION OF SENATE BILL NO. 161: Rep. Cody asked how long decisions are taking at this time. Chief Justice Turnage replied that the operating rules allow 120 days to deliver an opinion; noncomplex cases are generally delivered earlier, and a minimal number go beyond that time span. Rep. Cody asked whether alternative financing has been considered to fund the bill. Sen. Mazurek replied that he had not addressed the question because the biennium impact is only $114,000, and the alternative is to increase justices' workload by 30% while being the lowest paid in the nation. Sen. Mazurek suggested that other programs absorb the loss before wiping out the Supreme Court.

Rep. Fritz asked how Montana's system compares with Nebraska's. Jim Oppedahl responded that Nebraska has a constitutional provision allowing the court to call in district court judges, so it essentially has ten members. The Nebraska court system does not work very well because additional travel expenses are incurred, and districts don't have close ties to opinions delivered. As a result, judges alternatively have been adding lawyers, and presently have nine attorneys on staff. Rep. Fritz asked whether Montana would have a better system with an intermediate appeals court if money were no object. Chief Justice Turnage replied that an intermediate court would be helpful and may require two systems because of the size of the state, but it is difficult to state how the system would work in the real world.

Chairman Sales asked if there is a less expensive way to handle the situation, as the proposal may be too expensive considering Montana's population. Chief Justice Turnage replied that

increasing caseload is academic in the nation as well as the state. The American citizen seeks resolution in the courts when dissatisfied with the executive branch, and the Constitution provides access to the courts, due process, and equal protection under the law.

Sen. Mazurek closed discussion urging the committee to keep the human cost of delay in mind on this quality-of-justice issue. The matter is very important and is not a big-ticket item; the bill continues current level spending while preserving the status quo so that even greater sums of money will not be needed for an intermediate level court.

CONSIDERATION OF SENATE BILL NO. 264: Sen. Himsl, Senate District # 3 and sponsor, stated that the bill is an act requiring that the terms, conditions, and details of any compromise or settlement agreement entered into or approved by a governmental entity be subject to public inspection. The bill deals with public sector claims against the state or political subdivisions such as counties, cities, and school districts. When claims are settled by court action the results are made public, but when agreements are reached by compromise or negotiation the public has no way of knowing what happens; the public has a right to know. Liability questions cannot be answered because the information is confidential. Tort claims from 1976 through February 1986 settled against the state are in significant amounts; the Department of Administration paid $6,459,769 to settle cases, individual agencies settled 51 claims for $792,700, and one claim was over $500,000. The bill does not require publishing the terms and conditions of settlements, but makes them available for public inspection. This is a reasonable, sensible, forthright requirement for all stewards of the public trust.

PROPONENTS: George Moore, Montana Press Association, stated that the bill would accomplish two primary things: 1) the public would be better informed about the performance of its officials; and 2) the public would have an opportunity to judge whether the government and insurer have mounted responsible defenses for claims on the public purse. The quality of defense has a direct bearing on availability of insurance and premiums. Information is being withheld needlessly.

OPPONENTS: None.

STANDING COMMITTEE REPORT

March 5 19 87

Mr. Speaker: We, the committee on STATE ADMINISTRATION

report SENATE BILL 161

☐ do pass ☒ be concurred in ☐ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

Walter R. Sales
Chairman

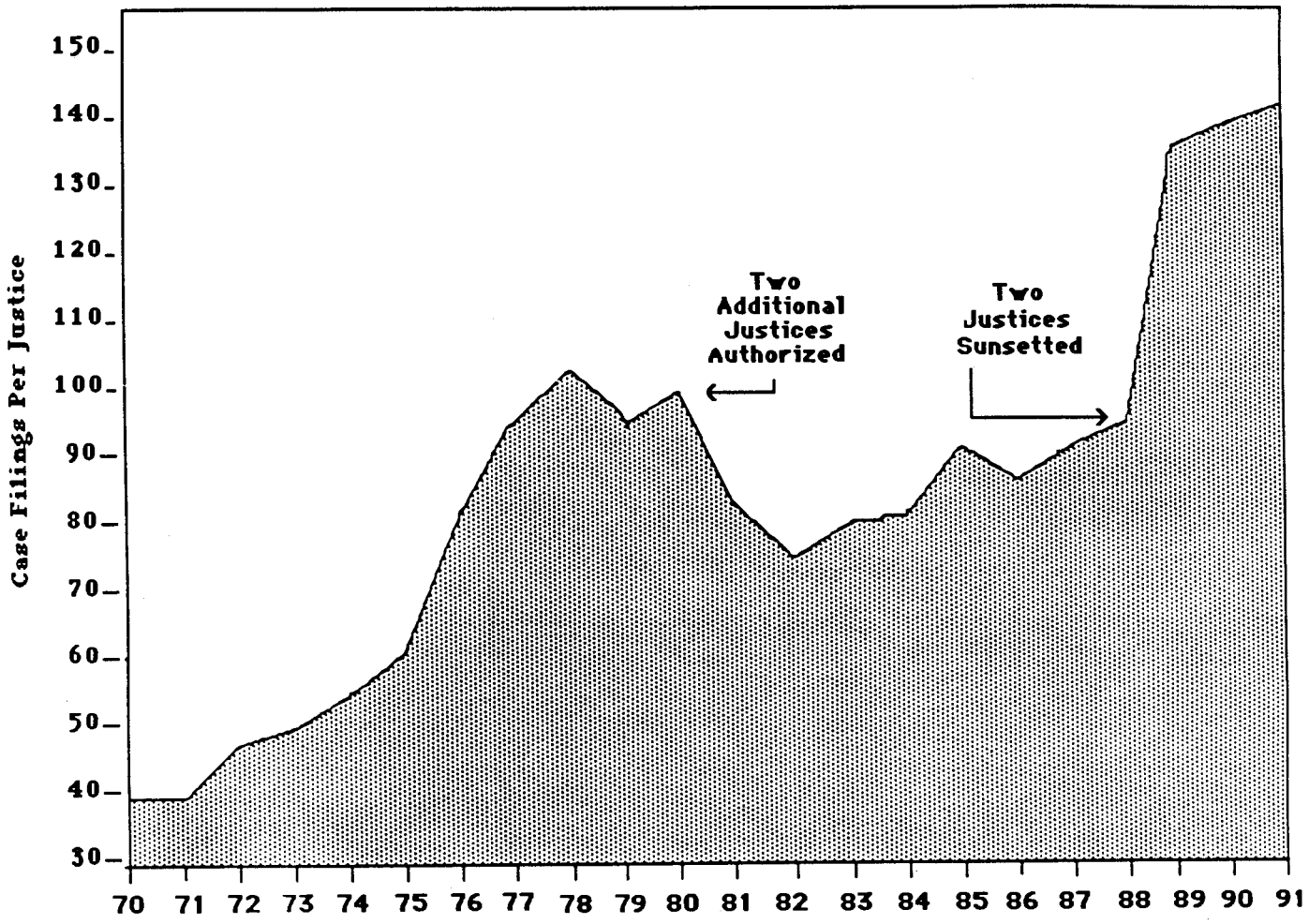
REPEAL SUNSET PROVISION OF TWO SUPREME COURT ASSOCIATE JUSTICE POSITIONS

third reading copy (blue color)

#1
3-5-87
SB 161

MONTANA SUPREME COURT

ACTUAL AND PROJECTED CASE FILINGS PER JUSTICE 1970 TO 1991



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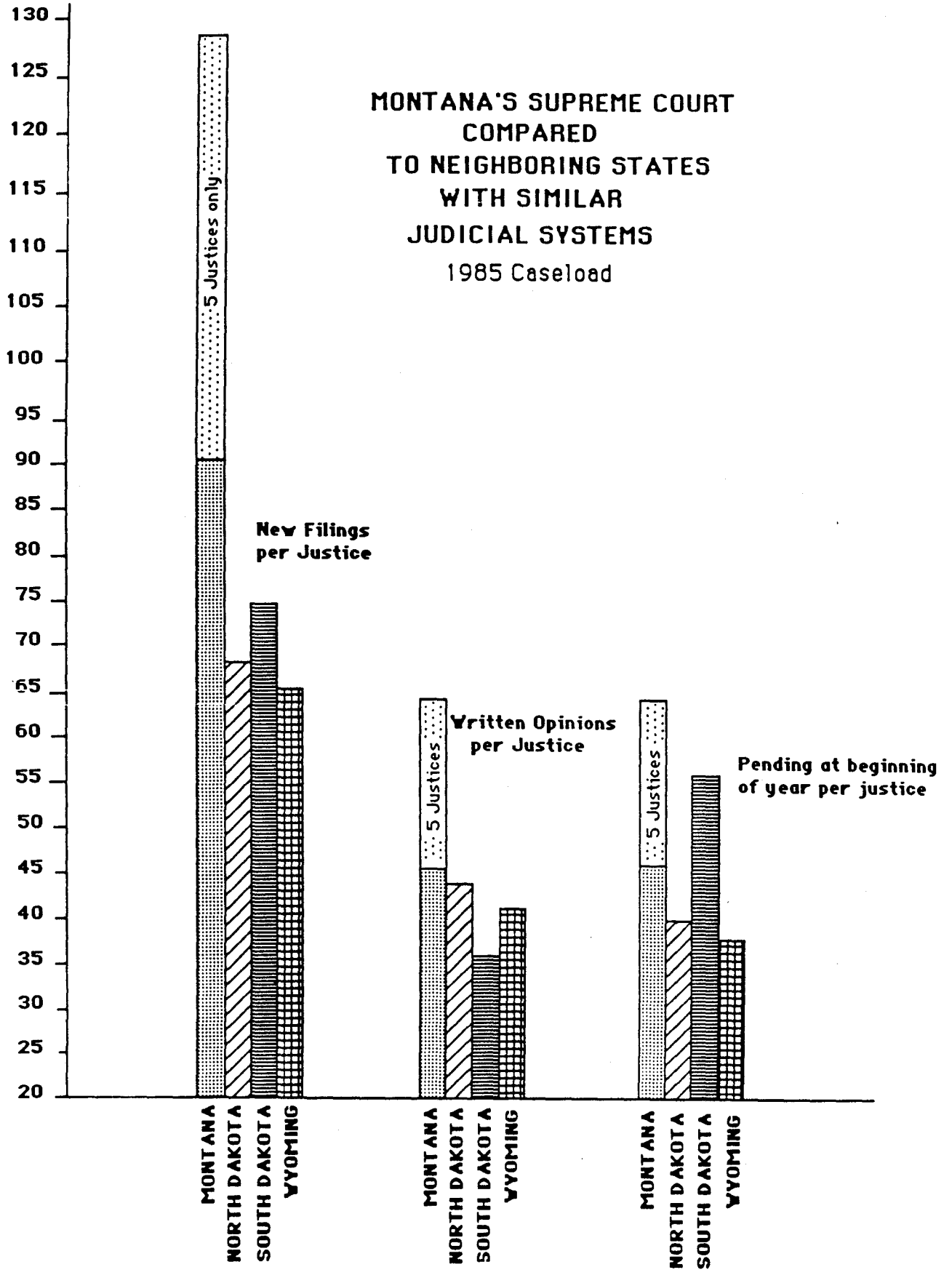
MONTANA'S SUPREME COURT
COMPARED
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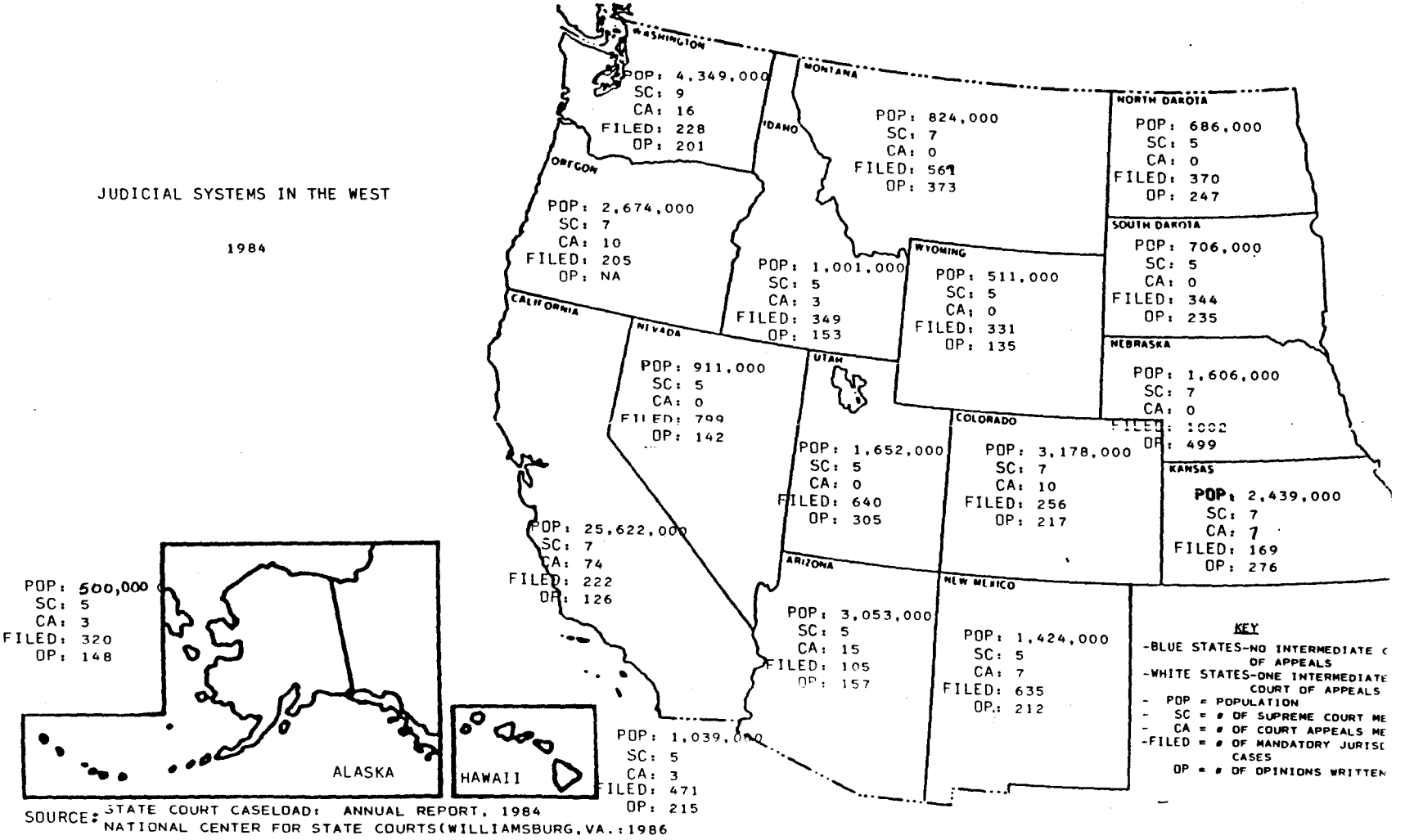
1985 Caseload
130
125
120
115
110
105
100
95
90
85
80
75
70
65
60
55
50
45
40
35
30
25
20
5 Justices only
New Filings
per Justice
5 Justices
Written Opinions
per Justice
5 Justices
Pending at beginning
of year per justice
MONTANA
NORTH DAKOTA
SOUTH DAKOTA
WYOMING
MONTANA
NORTH DAKOTA
SOUTH DAKOTA
WYOMING
MONTANA
NORTH DAKOTA
SOUTH DAKOTA
WYOMING

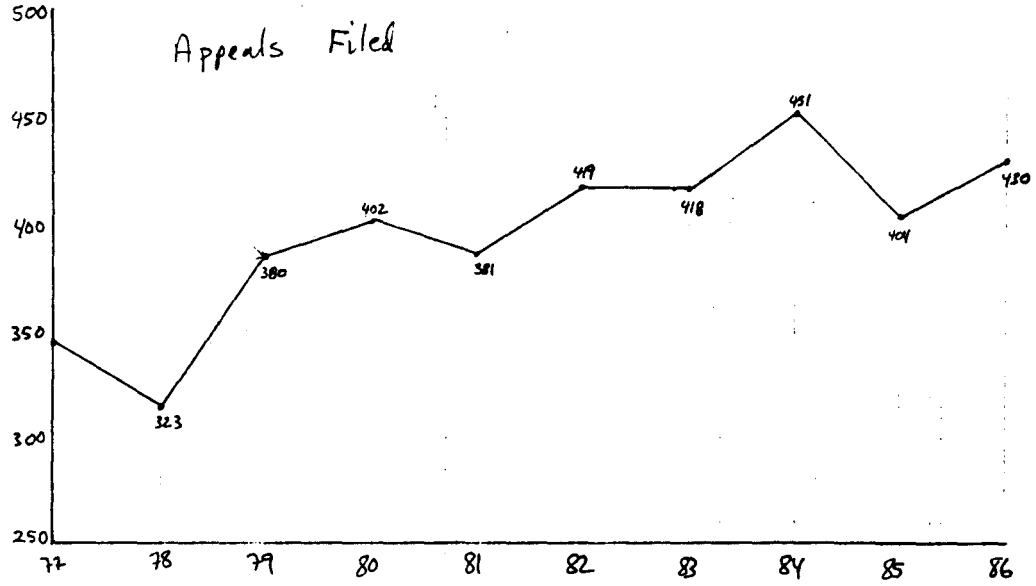
JUDICIAL SYSTEMS IN THE WEST

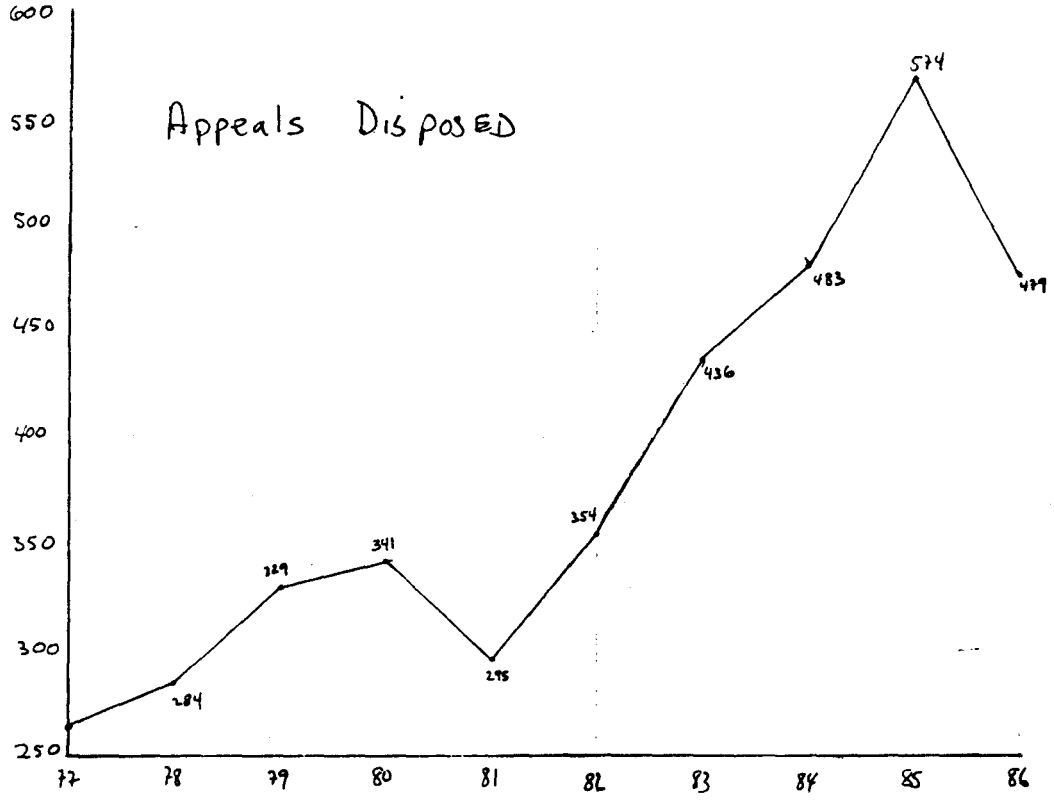
1984



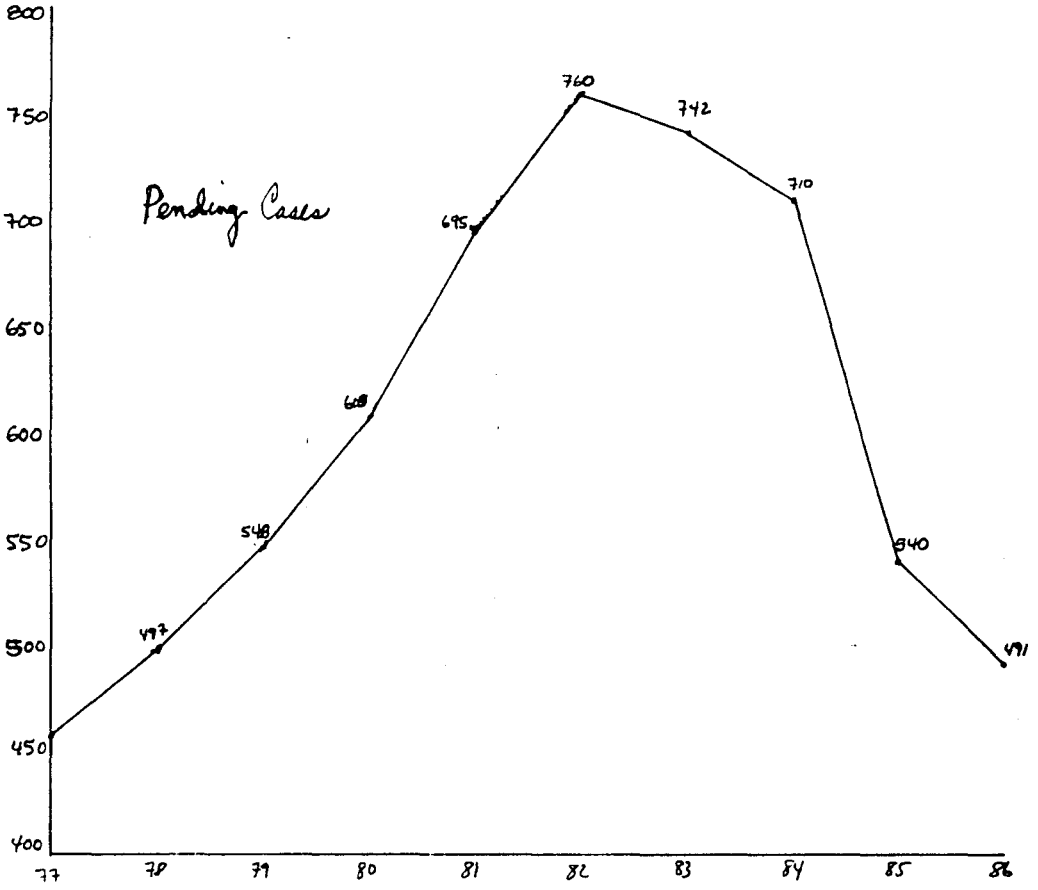
SOURCE: STATE COURT CASELOAD: ANNUAL REPORT, 1984
NATIONAL CENTER FOR STATE COURTS(WILLIAMSBURG,VA.:1986

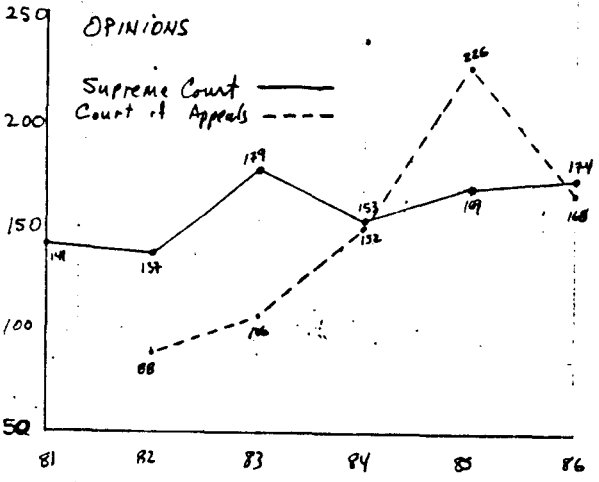
IDAHO SUPREME COURT & COURT OF APPEALS





IDAHO (Continued)





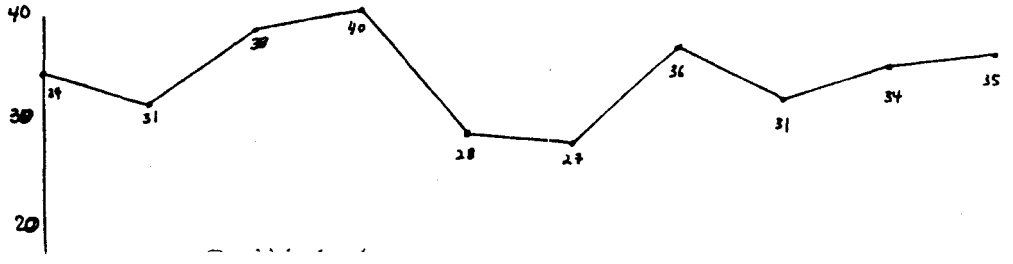


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EXHIBIT # 2
DATE 3-5-87
SB 161

WITNESS STATEMENT

NAME Margaret S Davis BILL NO. SB161

ADDRESS 844 Flowerree Helena MT DATE 5 Mar 87

WHOM DO YOU REPRESENT? League of Women Voters

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The League supports effective, timely administration of justice. Justice delayed is justice denied. Adequate personnel includes an adequate number of justices and the flexibility to allocate cases to panels of less than the full Supreme Court.

The League position on the judicial system in Montana was arrived at in the early 70's. It is important to note that at that time the statistical information that supports the need for a seven member court was not available. In terms of getting a handle on court administration matters, Montana is just getting started. Citizen confidence and respect in the third branch of government is keyed to how this branch of government is regarded by the other 2 branches.

CS-34

well aware than others of the necessity for reasoned, thoughtful judicial opinions on legal questions arising out of new ~~[illegible]~~ laws and interpretations of the statutes or the constitution.

VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEE

BILL NO. SB 161 DATE 3-5-87

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
J. A. Turnage	Supreme Ct	✓	
Fred J. Weber	Supreme Court	✓	
Jan Cyr Cahill	Supreme Ct Admin	✓	
George Bousliman	State Bar Pres	✓	
David Gliserman	Self	✓	
Margaret Davis	League of Women Voters	✓	
Steve Brown	Self	✓	
Pat Melby	State Bar of Montana	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 3, 1987

The twentieth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 3, 1987 by Chairman Joe Mazurek in Room 402 of the Capitol Building.

COSNDIERATION OF SB 173: Senator Bob Brown, Whitefish, introduced SB 173, which amends the laws relating to spousal privilege. He said spousal privilege is the rule that prohibits a person from testifying against his spouse without the consent of the spouse against whom his testifying. He said the bill would allow a person to testify against his spouse with only his own consent and without the consent of the spouse against whom he testifies. He explained the bill applies to both civil and criminal matters.

PROPONENTS: Mike McGrath, Lewis and Clark County Attorney, supported the bill because he said he has had cases where the wife will turn in a husband for a crime, but not able to testify against him after he has been charged. He said people do know about this law, because they do use it to their advantages as much as they can. He discussed several cases that he has had where this law interferred. He gave the committee Montana Supreme Court cases to look at (see Exhibit 1).

Mark Murphy, Montana Justice Association, said the court would have to take into consideration the mentality of the spouse if the court decides to put the spouse on the stand after the spouse has agreed to testify against the defendant spouse. He supported the bill.

OPPONENTS: None

DISCUSSION ON SB 173: Senator Crippen asked if the law states that hearsay can not be used against a person. Mr. McGrath said that was true and the hearsay rule protects the 5th amendment right. He said that rule has nothing to do with the one in HB 173. Senator Crippen felt the bill should not be used in criminal cases. Senator Crippen felt man and wife are one person whatever the circumstances are. He pointed out on page 1187 of the first exhibit that it states right there that man and wife have aways been thought of as one person. Mr. McGrath replied that the court has decided, as it reads on page 1187, that a man and wife are no longer one person when it comes to testifying against a spouse in a court of law.

Senator Mazurek asked what other states have passed laws in this area. Mr. McGrath stated this is a federal court idea. Mr. Murphy said most

would stop the Army from coming into a school and asking teachers about students who have shown interest in joining the service. He said a teacher could tell the Army as easy as any records could show if a kid has been in trouble before. He stated he did not believe it was the school's business to know what kids do after school off school property. He felt it wasn't fair if one student was drinking and one wasn't, but was at the party, get the same punishment. Senator Blaylock didn't like the contracts students signed so they could play in sports either. Senator Pinsoneault said if a student signs a contract to play a sport and the contract says no drinking, then the student should know the consequences. Senator Bishop asked if the passed amendments would only allow an identity of a student if the student was just arrested, but not charged. Senator Halligan said the student can be just charged for being at a beer bust or just seen at one and still be reported. Senator Van Valkenburg thought the three terms were about the same when it came to this bill. Senator Brown felt the guidance counselor will still have some trouble getting information about kids even with this bill. He wanted to insert into the bill that a student must attend a program by the guidance counselor on alcohol. Senator Blaylock asked Senator Van Valkenburg if he ever drank while in high school. Senator Van Valkenburg stated he was caught drinking and the school would not allow him to run for studentbody president because of it. The motion CARRIED with Senator Blaylock voting no.

ACTION ON SB 51: Senator Mazurek asked the committee if they wanted a subcommittee for this bill. The committee, after some reluctance, decided to think about having a subcommittee.

ACTION ON SB 152: The committee received amendments from Senator Walker for SB 152 (see Exhibit 3). Senator Pinsoneault said the law doesn't need to be amended he felt a 180 days was plenty of time to get the issue settled. Senator Mazurek said anytime one changes the statute of limitations it causes problems. He said the bill would have benefits for both sides of the issue, but the language has to be just right for it to work. Senator Mazurek thought maybe 180 days were not enough time. Senator Bishop stated the filing is not hard to do at all. Senator Mazurek thought a filing against the Human Rights Commission was difficult to do. Senator Bishop moved the bill DO NOT PASS. The motion CARRIED with Senator Yellowtail voting no.

ACTION ON SB 161: Valencia gave amendments to the committee (see Exhibit 4). The amendments would extend the term of the justice for another eight years; an extended sunset period. Senator Blaylock moved the amendment. Senator Halligan questioned doing this because the projection, stated in the hearing, made it sound like the case load will be the same as it is now in eight years. The amendment FAILED with Senators Crippen, Pinsoneault, Yellowtail, Galt, and Halligan voting no.

Senator Brown moved the bill DO PASS. The motion CARRIED.